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VIRGINIA HOUSING COMMISSION

Derelict Structures Sub Work Group

General Assembly Building

Richmond, Virginia

November 3, 2008

In attendance:

Chip Dicks
Mark Flynn
Karen Hardwick
Mike Thacker
Delegate Rosalyn Dance
Kelly Harris Braxton
Dan Webb
Tom Carr
Erica McKula
Brian Pennington
David Freeman
Cindy Hall
Anthony Burfoot
Rick Witt
Bill Ernst
Cal Whitehead
Ron Plymouth

The Virginia Housing Commission Derelict Structures Sub Work Group met to discuss H.B. 1671 (S.B. 1094). The discussion was facilitated by Mark Flynn (Virginia Municipal League) and Chip Dicks (Virginia Association of Realtors). Interested local government representatives attended the meeting and actively participated in a dialogue regarding the proposed legislation.

DELEGATE JOHN A. COSGROVE
DELEGATE ROSALYN R. DANCE
DELEGATE ROBERT D. HULL
DELEGATE DANIEL W. MARSHALL, III
DELEGATE G. GLENN ODER

SENATOR MAMIE E. LOCKE
SENATOR JOHN C. WATKINS
SENATOR MARY MARGARET WHIPPLE

F. GARY GARCZYNSKI
T. K. SOMANATH
MELANIE S. THOMPSON

Meeting Notes
Derelict Structures Sub Group Meeting- 11-3-08

Chip Dicks:

- Goals:
 - Streamline process, balance with private property rights.
 - Walk through a number of different proposals and try to reach a consensus.

Mark Flynn:

- The next stop for this document is the November 12th Full Housing Commission meeting.
- See in which areas we have a consensus; what we do not agree on will have to be removed from the bill.

Chip Dicks:

- For example, if we do not agree on building registration, we will pull this out and then let the localities go forward with what they have.
 - Included in the draft was a building registration feature for derelict structures. This is something different that has not been previously killed by the House or Committee.
- Try to get as good as piece of legislation to the Full Housing Commission, and get them to adopt it en masse.

Elizabeth Palen:

- The full meeting on November 12th is not the final Full Commission meeting.
- The final meeting is in December; can bring any new developments or changes in the proposed legislation to the attention of the Commission at that point as well.

Cindy Hall: Were these changes generated by a request from a locality?

- *Chip Dicks:* The goal was to make all the processes the same, so we tried to take the processes that dealt with tax liens and embed them into these sections; five or six processes that localities had to follow, depending on what statute it was under, so we tried to make everything an ordinance process and treat everything like a tax lien so that you would only have to follow one process.

Cindy Hall: Not satisfied with the tax lien language; can you explain this further?

- *Mark Flynn:* With the tax lien, the way the law works today, if the locality is cutting grass, tearing down a building, etc., it operates as a lien and has the same dignity as a tax lien. They get recorded in the City treasurer's office, so you do not have to go to circuit court in order to reward a lien. This is a quick process, and in my experience, these processes never created a burden for private individuals buying property because they are required to assess whether there are any liens as a matter of due diligence.

Cindy Hall: Look at the existing §15.2-906 language – there is a provision for it constituting a lien, and this language has the same comparison to a tax lien, so this is already covered in the existing Virginia Code. If we want to make the process clear, suggest taking this language out of

§15.2-906 and put it into §15.2-900; would like standardized language, but want it to read the way it reads in § 15.2-906 so that as soon as work is done by a locality, the line automatically attaches. This is already noted in the City treasurer's records, but having to record it in circuit court is burdensome, and time lapse may result in a problem; we like the process we have in place now, would like to keep it in place, at least from Norfolk's perspective.

Chip Dicks: Fine to go back to the language of paragraph four in § 15.2-906.

Cindy Hall: Do not agree with the changes to § 15.2-900 definition of "public nuisance"- deletion of "immediate threat..." Now requires the city to maintain an action by ordinance. We do not have time for this, we used the immediate threat provision to respond and cover costs. We ask that no changes be made to the definition of nuisance or the process that we follow; we use this section a lot to handle situations that require a quick response.

Karen Hardwick: Agree with Cindy's comments; don't have to advertise an ordinance to use this section; have to hit localities public meeting schedule, which is down to one meeting a month; the new proposed language is narrowing of what a nuisance could be; look at case law and research on nuisances; hard to come up with a definition, when a set of conditions presents itself, have to do something about it; the nuisance section does this

Chip Dicks: With no ordinance, you can declare property a nuisance- can you tear it down at this point? What is the standard of proof?

Cindy Hall: According to the current language, if it is not an immediate and imminent threat (high standard), then we have to maintain an action to compel the abatement of the nuisance; we would have to produce evidence.

Mark Flynn: So if there is no immediate and imminent threat, then go to circuit court.

Chip Dicks: Okay take this language out; move to § 15.2-906?

Mark Flynn: Depending on what we do with § 15.2-1127.

Cindy Hall: If we can agree to changes to § 15.2-1127, then we will not need changes to § 15.2-906.

Chip Dicks: We still have the problem with vacant building statement of intent, where the property is compliant with state building codes and just happens to be vacant. For example, if a property owner boards up his windows to keep someone from breaking in and all of sudden this requires registration, the General Assembly is going to have a problem with this. Look at § 15.2-906 and see what changes need to be made to this.

Cindy Hall: If we cannot worry about the italicized language until later on, Norfolk has a problem with some of the other changes; we want it to stay as it is with no changes.

Chip Dicks: Do you like the notice provision?

Cindy Hall: We would rather it just be mailed to address shown on tax assessment records.

Chip Dicks: Why don't you want to do the notice change using the uniform statewide building notice changes? This seems to be more streamlined, which is my goal, and not to complicate it. Because of changes to § 15.2-900, I can see why you do not want changes to § 15.2-906 or § 15.2-902, *except* with the notice provisions.

Cindy Hall: I think we can streamline this without have to refer to the statewide building code.

Mike Packer: We use § 15.2-906 often in Petersburg; the notice requirements as they exist now are valuable because of the due process requirements for lien holders. We have to give notice under federal Constitutional requirements for lien holders in order to be able to destroy the value of the surety on the loan they have made, and it is difficult for us to find out who they are. We have to do a full title search to find each person who might have some interest. This language says that you have to write to the main person and put an add in the newspaper; we take the position that the ad was notice to the rest of the world. We can put the add in the paper and feel secure that we were meeting the due process requirements.

Chip Dicks: Consensus is then to leave § 15.2-906 alone? (*Sub group response:* Yes.)

Mark Flynn: We still have the italicized language to deal with: "...and is boarded up or structurally unsound" should be added to this language. With foreclosures the way they are, large inventory of vacant structures that are in good shape, and these are not the target;

Chip Dicks: If we deal with this under the derelict structures section, do we need to deal with it in § 15.2-906?

Mark Flynn: No

Chip Dicks: Then lets just take it out § 15.2-906 all together.

Cindy Hall: We use § 15.2-907 and we like it as it is.

Chip Dicks: We will leave it as is.

Cindy Hall: We do not like § 15.2 907.1 in certain respects.

Chip Dicks: Breakdown:

- Talking about the different classifications of nuisance, blight, and the blight got severely clipped with eminent domain legislation. We decided not to attempt to redefine blight, to further restrict eminent domain. The idea was to create some other category, which we called a derelict building – in paragraph A1.
- If it meets the definition, under A2, there is an ordinance that implements the enabling statute. This requires the derelict building to be registered and the owner to pay a fee not to exceed \$50. We can use a building registration feature in which the owner has 90

days, the localities develop the form and tell the owners what they need to file, and send the notice using U.S. post certificate of mailing. This is the best way to prove that the locality gave notice and avoid issues of it not being signed for, etc.

- Paragraph A3 says that when locality delivers the notice, and owner does not file, there are remedies.
- Paragraph A4 gives the building owner something in return for registration fee; it allows them to be notified if there is a public safety incident.
- Paragraph A5 explains that once registered, the owner must submit a plan to demolish or renovate the building, and will address items of public health and safety issues in this plan. This will encourage property owners to take action with respect to their property, instead of locality having to come in using the nuisance authority.
- Paragraph A6 provides resources to homeowners.
- Paragraph A7 says expedite and incentive me to demolish property, complete demolition within a certain amount of time.
- Paragraph A8 – If an owner is going to renovate, this is something to expedite the process (if do not have to rezone).
- Paragraph A9- Prior to demolition or renovation, assessor says what it is worth now and what it will be worth after renovation. Get a real estate tax abatement, and incentivize property owner to go in and either renovate or demolish. There is a program in Richmond that works like this, and it has been very successful.
- Paragraph A10 allows the locality to proceed to make repairs or abate or remove public nuisance, or may exercise other remedies.

Anthony Burfoot: This legislation puts the proper steps in place, and gives the community the opportunity to get rid of the derelict properties.

Cindy Hall: We just have specific issues with language in some of the paragraphs, but we agree with the concepts.

Chip Dicks: The definition is more specific, not as restrictive.

Cindy Hall: Paragraph three is this redundant with paragraph ten– can these be merged into paragraph 10?

Chip Dicks: What I was trying to make clear is, as a building owner, when you send me a declaration that my property is derelict, if I don't register within 90 days, then under A3 can go straight to the end- Cindy- can just add this language to paragraph 10- "or fails to register" –

Mark Flynn: What if take what is in ten and make it as a separate paragraph in three?

Cindy Hall, Karen Hardwick: Think it is good to put remedies in the end.

Karen Hardwick: In paragraph A1, the second line, "has been declared as a derelict building under such ordinance"- don't want to have an ordinance for each property, and way it is written now might be confusing – change the language-

Chip Dicks: strike it all together- avoid scenario where have to adopt ordinance for each property

Karen Hardwick: In paragraph A2, the last sentence: delivered by first class mail – change to “written notice sent by first class mail with the locality obtaining a US Postal COM shall constitute delivery pursuant to this section.”

Cindy Hall: In paragraph A4 – it is too hard to notify the owner, to know when there is an incident; this will be burdensome to have to notify the owner every time; no parameters, so can we notify them once a month, once a year?

Mike Packer: This is a creation of duty that if we fail to meet, we are liable.

Cindy Hall: This shouldn't be a required section; we do notify owners when we talk to them about things going on with their property, but to have to notify them will be way too burdensome.

Mark Flynn: What is the goal of the section?

Chip Dicks: If we don't have this section, then there is a fee but the building owner gets nothing in return; also, the owner should be notified. From a political standpoint, in order for registration to pass, have to have something in return here.

Cindy Hall: Then we should add some more parameters to the language.

Chip Dicks: You can provide for this in your ordinance, and if think it creates potential liability, work it out; not sure how any county could sue for any liability anyway?

Anthony Burfoot- The chances are that these buildings do not have any insurance on them; add a component where the owners have to show insurance on these properties; people losing their lives and the city cannot be responsible for that.

Cindy Hall: If language is amended with more specificity, this may cause more problems.

David Freeman: Should add “on the property” to public safety incident?

Mike Packer: Suggestion- The ordinance “shall” contain provisions for the owner when something happens; then add one more sentence that says “failure to do so shall not create additional liability upon the city or locality.” This gives each locality the ability to define the type of notice they are going to give, but it has to be real.

Chip Dicks: If there is a major fire, or police incident, or if the second floor falls out, then really saying to the owner, there is a major problem with your building and you need to address it; something needs to be done to address a condition on the property.

Cindy Hall: This is the purpose of having the registration requirement, to have the contact information.

Chip Dicks: Tailor this language to say “in the event of fire, police or any other incident that affects the safety of the structure” the city will notify the property owner so that he can address the problem.

David Freeman: We should make sure that we are not tripping over a legal notice requirement.

Kelly Harris Braxton: Concerned about incidents that are not known by the locality.

Chip Dicks: Limit it to police or fire incidents, because if it is a structural issue, the building code officials will go after it.

Cindy Hall: Paragraph A5 – Time parameter for submitting the plan, “within a time specified the locality” – will vary depending on how many parcels, etc; should give the discretion to the official responsible.

Cindy Hall: Paragraph A6- Change “resource” to “information.”

Mark Flynn: Paragraph A7- needs a cross reference to historic district provisions, does not necessarily trump these- “shall not limit any ordinance adopted pursuant to section 15.2-2306”

Karen Hardwick: Paragraph A7- change “waived” to “refunded.”

Mike Packer- Concerned about those people who are not meeting the definition of “derelict structure” but who want to demolish the building, etc; they are not getting the same treatment as someone who may be neglecting their building. There is also an issue with the tax abatement.

Chip Dicks: Figure out how not to have people let their property get run down to get the program; don’t want to incentivize this.

Anthony Burfoot- Also don’t want people to do the bare minimum, piecemeal work, and still get the tax abatement.

Mike Packer: State constitution issue- will have to fit this under one of the sub classifications of exempt property, Article X, subsection 6; looks like section h under 10.6 – “by virtue of age and use.” If want to do this and meet the constitutional requirements, do not tie it to the fact that it is derelict, tie it to its age in a particular district and the fact that it was going to be rehabilitated; tie the requirements of your registration law to a requirement that a locality have a program in that particular area when doing the registration in order for it to qualify; this way, do not discriminate; every jurisdiction that has problems with derelict structures probably already has a program to do this.

Karen Hardwick: So to be able to have this ordinance, as a condition, have to have a tax abatement program that is consistent with Article X, section 6(h) for renovation of older structures.

Mike Packer: Without a tax abatement in place, would not be able to use this particular piece of enabling legislation.

Meeting adjourned.